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**CITY OF SAN JOSE
DEVELOPMENT SERVICES**

June 29, 2007

Darryl Boyd, Principal Planner
Department of Planning, Building and Code Enforcement
San Jose City Hall
200 East Santa Clara Street
San Jose, CA 95113-1905
darryl.boyd@sanjoseca.gov

RE: Draft Environmental Impact Report for Coyote Valley Specific Plan

Dear Mr. Boyd:

Thank you for allowing us to comment on the Draft Environmental Impact Report (DEIR) for the Coyote Valley Specific Plan (CVSP). Since 1958, Greenbelt Alliance (GA) has been protecting natural areas and working farms. Over the years, our mission has expanded to recognize the need to accommodate the region's growing population with better land use planning. Through research and public policy development, our organization seeks to educate communities about the benefits of compact development near public transportation. Since 1990, Greenbelt Alliance has endorsed over 100 development projects and nearly 20 neighborhood plans that help relieve the pressure to build out on the greenbelt. Local examples of projects we have endorsed include Bay Meadows Phase II (San Mateo), Hitachi Campus (San Jose), Mayfield Mall (Mountain View), and Villa Montgomery (Redwood City).

Additionally, Greenbelt Alliance has produced many influential reports that have helped shape the debate over growth and development in the Bay Area. In 2004 we received a national Honor Award from the American Institute of Architects for *Getting it Right* (2003), our vision for preventing sprawl and creating a vibrant community in San Jose's Coyote Valley. Our other award-winning studies include *Smart Infill* (2002) and *Bay Area Smart Growth Scorecard* (2006).

Summary of Comments and Concerns

This comment letter from Greenbelt Alliance is in addition to the comment letter submitted on our behalf from the law offices of Shute, Mihaly and Weinberger LLP.

In reading through the DEIR, it is apparent that its release is premature due to the fact that planning for Coyote Valley is not complete. This document is meant to inform the public and decision makers on the proposed development of 3,800 acres into a new community of nearly 80,000 people. This is similar to creating a city the size of Mountain View on precious land that supports working farms, wetlands and groundwater recharge. Despite the proposed project's magnitude, there are many glaring omissions and therefore, it is virtually impossible for anyone to make an informed decision as to whether or not this project should move forward.

It seems there is a rush to develop Coyote Valley as the DEIR sets the stage to weaken the triggers further to allow the adoption of the CVSP. In the face of an imminent General Plan update and significant infill opportunities throughout San Jose, there is no need to weaken the triggers or force through an unfinished plan. If San Jose is committed to smart growth, then the focus should be on North San Jose.

The DEIR fails to completely describe the Project Description, alternatives, growth inducing impacts and viable mitigation measures. In fact, the DEIR is so woefully inadequate, that the City must go back and finish the planning effort before re-circulating a DEIR. The Project Description makes no mention of Coyote Creek, the valley's use as a wildlife corridor or a feasible phasing plan for development.

Repeatedly, the DEIR relies on vague and unlikely mitigation measures for significant impacts, such as reliable Caltrain service to mitigate gridlock on Highway 101 or a nebulous advanced recycled water treatment plant to mitigate for known water supply impacts. The DEIR is also silent on the energy intensive nature of pumping and treating water for this new development.

In particular, Greenbelt Alliance questions the DEIR's heavy focus on roadway improvements. This plan has been touted as a smart growth transit-oriented community designed around the pedestrian. If so, then why are 88% of all trips made by automobile? Why must rural roads be expanded to accommodate the increased traffic?

Excavating a man-made lake is not rising up from the environmental footprint, yet the CVSP claims it is needed for flood control. With so much detail afforded to the flood control system, why is the plan lax with development adjacent to Coyote Creek and in the Laguna Seca? Ball-fields are still a form of development- especially when on sensitive wetlands. The lake is touted as being needed to create a sense of place so that people want to live in a high density environment. Then how will San Jose entice people to live in North San Jose which is proposed to have even higher densities, no lake and no immediate views to Coyote Ridge and the Santa Cruz Mountains?

Even more significant is the impact this proposed project will have to farmlands, yet there is no description of a farmland mitigation policy and in fact, the DEIR sets the stage to exempt the development from having to protect any farmland at all. How can San Jose

ever consider Coyote Valley a smart growth community when the DEIR makes no attempt to address and mitigate this significant impact?

Background of Proposed Project

The City of San Jose is currently initiating an update of the General Plan. The San Jose 2020 General Plan was adopted in 1994 and as the DEIR states “the urban development of the Coyote Valley was originally determined to be beyond [it’s] scope”. Triggers for development were put in place at that time to protect the City from the premature development of an area that could become a fiscal drain on the City’s budget. Despite this, the City Council relaxed the triggers to allow the preparation of a Specific Plan in 2001 “earlier than was envisioned in the San Jose 2020 General Plan.” There are still several triggers in place that must be met before the City Council adopts the CVSP. Among these are a forecasted balanced budget and the addition of 5,000 new jobs.

Then in 2005, the City Council approved the update of the North San Jose Area Development Policy which provides for up to 83,000 new jobs and 32,000 new housing units in the employment heart of San Jose which is already served by public transportation and other infrastructure. North San Jose’s potential for redevelopment as well as its proximity to downtown and San Jose International Airport make this the largest and most significant infill opportunity in the region. Intensification of uses in this area is in keeping with the General Plan’s goal of guiding development to appropriate locations, including fostering greater intensities around light rail and other transit facilities, while preserving hillsides and other natural resources.

San Jose has also been engaging in piecemeal industrial land conversions throughout the City due to the high office vacancy rate and demand for more housing, and had attempted to rezone the last industrial land in Evergreen for residential uses. Evergreen is primarily housing, has no viable public transportation system and no job base. As a result, the traffic patterns are among the worst in the South Bay, leading to increased air pollution. Meanwhile, Coyote Valley has long been held in reserve for its “potential economic benefit to the City with the creation of industrial jobs and bringing the City’s jobs to housing ratio into better balance.” Ideally, new jobs should be directed to Evergreen before Coyote Valley to encourage a reverse commute pattern and support a light rail extension down Capitol Expressway.

Greenbelt Alliance maintains that the existing triggers must not be weakened to allow residential development to lead the way in Coyote Valley. The potential for this area to become another Evergreen is of very real concern and infill opportunities such as North First Street must be exhausted before farmland and wetlands are paved for new development. Furthermore, the City’s General Plan should be updated first, providing an opportunity to assess if the City is headed in the right direction and whether or not the City is placing itself in a precarious position with more development than it can economically provide for. These are important considerations that must be taken into

account before 3,800 acres of prime farmland are replaced with urban uses, especially if those urban uses may not be needed for awhile or could sit vacant. Smart planning utilizes infill opportunities that are adjacent to existing public transportation. Pursuing green-field development first, on the other hand, can still be categorized as sprawl.

Project Description

Coyote Creek

The DEIR fails to adequately describe a number of key project features of the CVSP in sufficient detail for their impacts to be effectively analyzed. While Bailey Avenue over the Santa Teresa Hills (BOH) is outside of the project area, it is mentioned as part of the Roadway System (2.1.7.3) as being extended to ultimately connect with Almaden Expressway. However, Coyote Creek is not mentioned at all in the Project Description even though some development is proposed within its floodplain. In the Hydrology and Water Quality section 4.8.3.5, the DEIR states that “implementation of the CVSP would include the construction of new land uses and associated infrastructure, including roadways and bridges...The construction phase would involve excavation and grading activities, including construction of two new bridges over Coyote Creek”. The DEIR goes on to say that this construction has the potential to degrade water quality in the creeks which could lead to erosion and adverse effects on wildlife.

Development of the CVSP includes urban uses east of Monterey Road up to within 100 feet of Coyote Creek. The 100 foot riparian corridor is based on a city policy. The DEIR does not adequately describe the science to support these policies. A new community with a projected build out population of 70,000- 80,000 people will have significant environmental impacts on the Coyote Creek Park Chain which the DEIR fails to describe and analyze. What the DEIR does mention is that a portion of Coyote Creek downstream from the CVSP area is experiencing “substantial creek bank incising due to recent construction of the Silicon Valley Boulevard Bridge over Coyote Creek.” (DEIR 341) It is reasonable to assume that the construction of two new bridges over Coyote Creek could lead to further erosion along the creek bed and therefore, that the DEIR fails to adequately describe these impacts.

Wildlife Corridor

The Project Description fails to describe Coyote Valley as a wildlife crossing for a variety of animal species between the Santa Cruz Mountains and Mount Hamilton Range. There is contiguous development along Highway 101 from San Francisco through to the southern reaches of San Jose just before Coyote Valley. Coyote Valley offers the first break from development as well as the point where these two mountain ranges are in the closest proximity to each other. Absent any detailed description of this major connector for species of special status, including badgers and mountain lions, means the project impacts cannot be adequately analyzed.

Phasing Plan

The DEIR Project Description mentions five phasing scenarios, but there is currently no phasing plan for the CVSP beyond the 5,000 jobs trigger. Once this has been met, then market-based development would occur without any plan for balancing the projected 55,000 jobs and 26,000 housing units. This trigger is insufficient for phasing development. The City of San Jose should outline how development will be phased in Coyote Valley and then re-circulate the DEIR with this analysis. Otherwise, phasing could occur in a variety of different ratios over different time periods and result in different impacts. The City is rushing ahead to release a DEIR for the CVSP which is not even complete. Therefore, the DEIR is inadequate.

Environmental Setting

According to the DEIR, property owners for 45% of the total acreage to be developed in Coyote Valley did not allow access for environmental consultants to conduct field surveys. Windshield surveys are an inaccurate and insufficient form of conducting surveys. The DEIR is supposed to be based on the best information available in order to thoroughly evaluate the existing conditions of the environmental landscape. However, when only a bit over half of the 3,800 acres to be developed have been surveyed for a report that is intended to analyze environmental impacts, it is safe to assume that the DEIR is insufficient as it does not adequately nor completely describe conditions as they currently exist.

The growth inducing impacts as a result of the proposed development are not adequately described. The environmental setting fails to describe Almaden Valley's proximity to the CVSP development area. While the CVSP calls for the expansion of Bailey Avenue over the hill into Almaden Valley, it does not describe the predominantly rural nature of this valley. Almaden Valley is also designated an Urban Reserve, even though this valley makes even less sense for urbanization than Coyote Valley as it is not easily accessed by public transportation nor highways. It is foreseeable that development of Coyote Valley along with expansion of rural roads could lead to the intense pressure to develop Almaden Valley next considering San Jose's development history. The DEIR does make mention of the Santa Teresa residential neighborhoods, which are separated from the development area by Tulare Hill and the Santa Teresa Hills, but it completely fails to mention Almaden Valley to the west of Coyote Valley.

Land Use

Gavilan College is proposed to be located along Bailey Avenue on the west side of Coyote Valley where there are currently industrial uses depicted on the land-use map. If CVSP is in keeping with the goal of 50,000 industry driving jobs, then where will these

industrial jobs be re-located to? The DEIR fails to describe the impacts associated with this change in land-use. In addition to moving jobs to other locations, the traffic generated by a college is quite different from campus industrial and this impact was not identified nor described in the DEIR.

Loss of Prime Farmland

The CVSP calls for the conversion of over 2,400 acres of prime farmland to urban uses. Nearly 50,000 acres of farmland are being converted each year in California. One way for cities like San Jose to deal with the rapid conversion of some of the United States' most fertile farmland is to pursue more compact development within already urbanized areas by redeveloping under-utilized land. These opportunities should be exhausted before farmland is developed. This is one of the tenets of 'smart growth'.

If the CVSP is to go forward, then appropriate mitigation measures must be adopted to address the loss of farmland. Agricultural mitigation policies are becoming more popular throughout California. The City of Davis requires developers to protect two acres of farmland for every acre lost to urban development. San Joaquin County communities are required to pay a fee per acre for every acre lost to development. While this does not create new farmland, it does place farmland that is at risk of development off limits by permanently protecting it. The loss of farmland is a significant impact. Protecting other farmland at a higher ratio to what is lost could reduce this impact to less than significant. The DEIR suggests the City might consider the adoption of an agricultural conservation easement, if such an easement is ultimately determined to be feasible. To create new farmland, the DEIR calls for taking already developed land, demolishing existing structures and converting land back to agriculture. (DEIR 114) This would be an unreasonable request and lays the groundwork for the City of San Jose to adopt a statement of overriding considerations due to the infeasibility of the mitigation requirement.

In addition, it would seem that the DEIR section on page 115 stating that "protection of existing farmland...is not considered by the City of San Jose as adequate mitigation under CEQA" suggests that the City is rejecting protection of existing farmland as a feasible mitigation. This reading is reinforced by the explanation in the DEIR that preservation is supposedly inadequate "because the net result of such actions would still be a loss of farmland acreage."

Rather than seriously explore how an agricultural mitigation program might be designed and implemented, as required by CEQA, the DEIR goes into detail as to why the above mitigation measures would be difficult to accomplish. The DEIR completely fails in its task of identifying feasible mitigations for this enormous loss of farmland. For example, when considering the protection of existing farmland, the DEIR fails to specify a ratio.

The DEIR is also inconsistent with LAFCO's recently adopted agricultural mitigation policies. Even though the DEIR does not explicitly mention the Land Evaluation and Site Assessment model (LESA), a January 4, 2006 Planning Department memo is footnoted on page 116 which does make mention of the City using the LESA model. In addition, planning staff have verbally made mention at meetings of their use of the LESA model. LAFCO incorporated the Cortese-Knox-Hertzberg Act definition of prime farmland into its policies which is what San Jose should do as well. The LESA model is problematic and can be manipulated to suit the applicant's needs and has repeatedly failed to protect farmland in Gilroy. Greenbelt Alliance would like to make reference to a letter from Committee for Green Foothills (Attachment A) which outlines why the City should do the agricultural assessment now instead of segmenting it out on a project by project basis, and why a clearly defined mitigation measure must be identified now as required by CEQA.

Transportation and Traffic

The CVSP calls for significant investments in highway and road improvements. For a community based on 'smart growth' principles, the approach the City has taken is backwards. There is currently no frequent nor reliable Caltrain service south of Diridon station, so this project, in addition to being on a green-field, is also not transit-oriented.

Trip Generation

The DEIR states that 88% of the projected 302,780 daily new person trips would be made by automobile while only 4% would use transit. This is based on the VTA 2030 Model which was based off of the MTC Model. According to the 2000 Bay Area Travel Survey completed in 2005 by MTC, people who live within ½ mile of a rail/ ferry stop use transit for 19% of all trips while only 55% use their cars. These high auto use numbers from the DEIR highlight the lack of any viable Caltrain service in Coyote Valley. The CVSP also requires the creation of a four-lane parkway, as well as the six-lane Coyote Valley Boulevard and other significant road improvements. The majority of workplace is located in Northern Coyote as opposed to along the Caltrain line as GIR suggested. The land uses in CV support auto dependency.

The DEIR states that that majority of CVSP traffic trips will use Highway 101; that "10 of the 52 directional freeway segments...would operate at an unacceptable LOS F." These impacts are deemed significant and unavoidable. The DEIR fails to identify any mitigation measures and assumes that the future enhancement of Caltrain service could help alleviate this gridlock. However, this is an unacceptable mitigation measure as it hopes for the future possibility of frequent and reliable Caltrain service coming to South County. While this would be ideal, much of the CVSP hinges on this one uncertainty. VTA has been repeatedly vocal about the lack of funding for operating and maintenance of frequent rail service. Other public transportation improvements, such as BART, threaten to take precedence. The DEIR unreasonably relies on some possible future event

as mitigation for a certain significant impact. Gridlock on Highway 101 will entice commuters to use alternate routes for travel, placing additional pressure on rural roads and this growth inducing impact has not been adequately analyzed in the DEIR.

Bailey over the Hill

The project description of the DEIR and the CVSP both call for expanding BOH to four lanes. However, there was insufficient analysis done to identify the impacts associated with this expansion. BOH expansion will encourage drivers to avoid the gridlock of Highway 101, as it provides an alternative entrance/ exit out of Coyote Valley. The proximity of industrial jobs in the northwest corner of the plan area in addition to Gavilan College locating closer to the west foothills provides an added incentive for people to use BOH. The impacts this increased traffic will have on Almaden Valley and County roads are not analyzed. Since the CVSP design facilitates an auto-dependent community which puts pressure on adjacent communities to invest in road improvements, the DEIR completely fails in its task to analyze the growth inducing impacts that result from constantly building up roads due to increased traffic volume.

Santa Teresa Boulevard

In addition to Highway 101, there are two main thoroughfares that South County residents use to head north: Monterey Road and Santa Teresa Boulevard. The CVSP calls for a 50 acre lake to be excavated at the intersection of Bailey Avenue and Santa Teresa Boulevard, re-routing traffic around the lake through the Coyote Core. This effectively blocks this route as a thoroughfare which could add traffic onto rural roads in Almaden Valley. The DEIR looked at several alternatives, one of which was Greenbelt Alliance's *Getting It Right* (GIR). However, the DEIR alternatives analysis was superficial and dismissive at best and completely failed to compare the plans. GIR kept this intersection intact. A more thorough analysis on the impacts associated with each should be completed.

Hydrology and Water Quality

The development of Coyote Valley will pave over nearly 3,800 acres of open lands with mostly impervious surfaces. Figure 4.8-2 (DEIR page 330) depicts the floodplain area. From a land use perspective, this map supports *Getting It Right's* (GIR) vision of a 750-foot wide floodplain for Fisher Creek, no development east of Monterey Highway, and the use of Laguna Seca for its natural flood control and storage functions. The DEIR states in section 4.8.2.4 that Laguna Seca "is subject to winter inundation when the Fisher Creek channel overflows. The flooding typically remains during wet winters when the groundwater table is especially high." The DEIR ignores how ball-fields, which the CVSP has located in this area, would be an incompatible use with wetlands needed for flood control.

Since the CVSP is supposedly based on smart growth principles and rises up from the environmental footprint, then why does it ignore Coyote Valley's unique role in flood control and groundwater recharge? The DEIR fails in its task to address the impact an increase in impervious surfaces will have on replenishing the sub-basin. It is also dismissive in the impact it will have on downstream residents. Section 4.8.3.2 of the DEIR states, "Development in or near a natural floodplain has the potential to change the floodplain and affect flooding further downstream." In the winter of 1983, heavy rainfall overflowed Coyote Creek and lead to extensive damage to properties in the Alviso area of San Jose. The United States of America, on behalf on the Federal Emergency Management Agency (FEMA), sued both the City of San Jose and the Santa Clara Valley Water District for negligence. In the complaint (Attachment B), it is stated that "the Flood Control District ha[d] failed to maintain Coyote Creek in a manner that would be likely to prevent flooding in the Alviso area." It would seem that development immediately adjacent to Coyote Creek, and therefore the increased urban runoff, as well as development in the majority of the floodplain would have a significant impact on residents and properties downstream. The DEIR fails in its analysis of these potential adverse impacts.

At the bottom of page 335 in the DEIR are the following sentences: "The proposed CVSP project would have no more impervious surfaces or runoff than the previously approved CVRP project. Therefore, flood control improvements previously approved for the CVRP project...will have enough capacity proportionately for the runoff expected from similar drainage areas within the CVSP project." Please explain this statement. How could a 3,800 acre development have no more impervious surfaces than the CVRP project?

The DEIR on page 340 states that even though the San Francisco Estuary Institute indicates that Coyote Creek is relatively stable in channel form, the SCVURPPP HMP report does not exempt Coyote Creek from hydrograph modification management. A 2001 letter from the National Marine Fisheries Service to the Army Corps of Engineers mentions Coyote Creek's long history of in-stream gravel mining, stating, "down-stream of Cochrane Road, the Coyote Creek channel and floodplain have been highly altered by mining. Through this reach, water releases from Anderson Reservoir by SCVWD will provide marginal benefits to steelhead unless the channel geomorphology of Coyote Creek is restored." (Attachment C) While the DEIR mentions the Fisheries and Aquatic Habitat Collaborative agreement, it makes no mention of the gravel mining and summarizes, "the determination that Coyote Creek *may be* a stable creek channel could exempt the project from HMP requirements."

Again, the statement in the DEIR that "substantial creek bank incising" (DEIR 341) has happened along Coyote Creek downstream from the CVSP area "due to the recent construction of the Silicon Valley Boulevard Bridge over Coyote Creek" would contradict the statement under Impact H/WQ-9 that "there is no analytical or physical evidence that the proposed CVSP development would worsen Coyote Creek erosion."

Please explain how the construction of two new bridges over Coyote Creek will not result in further erosion when taking into consideration the creek's mining history?

The DEIR is setting the stage to try and make the claim that the project does not need to meet HMP requirements because it would not be possible to do so with the proposed CVSP project. "It has been determined that HMP basins placed within the CVSP development area would not be able to comply with all HMP requirements including time to drain which could result in impacts to residents associated with increased mosquito populations." (DEIR 340) Due to the shallow depths to groundwater, the SCVWD has determined that groundwater recharge with direct urban runoff is undesirable. The DEIR is highlighting here that critical pieces to the project are unknown and hopes that sometime in the future it can be demonstrated that the risk of erosion to Coyote Creek is minimal because if it is not, they are unable to properly mitigate for that impact.

Energy Resources

The Energy section of the DEIR states how CEQA Guidelines require a discussion of the potential energy impacts of projects, "with particular emphasis on avoiding or reducing inefficient, wasteful, and unnecessary consumption of energy."

Energy Policy #2 of the San Jose 2020 General Plan states that "the amount of energy used for commuting should be reduced." Infill development adjacent to existing rail lines with frequent service would support this policy. Green-field development adjacent to rail lines with limited service does not. The City's Energy Goal is to "foster development which, by its location and design, reduces the use of non-renewable energy resources in transportation....and utilities." It would seem that the DEIR of the CVSP is inconsistent with existing City policies.

Section 4.12.3.2 discusses the energy impacts of the CVSP and makes no mention of the advanced treated recycled water plant needed in order to address both water quality and water supply. The Santa Clara Valley Water District is requiring that all water used for groundwater recharge in the CVSP area must be advanced treated recycled water. Such a treatment plant is offered as a mitigation measure to address water supply, as the proposed project would "result in a reduction in groundwater elevations throughout the CVSP, affecting discharge into Fisher Creek and....to the northern Santa Clara Valley Sub-basin."

However, the cost and energy intensive nature of such an ambitious program for water supply and quality in Coyote Valley highlights yet another uncertainty in the DEIR. According to the California Energy Commission (CEC), approximately 19% of all electricity, 30% of all natural gas and 88 million gallons of diesel are used to convey, treat, distribute and use water and wastewater statewide. The CO2 emissions associated with the proposed advanced treated recycled water plant for CV are not analyzed. This has been segmented off from the DEIR even though such a plant is used as a mitigation

measure for water supply. It would seem that this would be a significant impact, but that the DEIR has completely failed in its task to identify, describe and mitigate for such an impact. Once again, the DEIR relies on a future costly and uncertain mitigation measure for a known water supply impact. The DEIR fails to adequately describe how CVSP will perform groundwater recharge by failing to describe the suggested mitigation measure.

Alternatives- Getting It Right

According to CEQA Guideline 15126.6(d) the EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. Greenbelt Alliance's *Getting It Right (GIR)* was included as one of the alternatives, but the description of our vision was so completely lacking of any real detail that the public and decision-makers are unable to make an informed decision based on this comparison.

The DEIR states that the GIR is similar to the CVSP in many ways. In actuality, they are different in many ways, but one would not know that based on the limited description provided in the DEIR. It is stated that the main difference between the two plans is the smaller footprint and resulting development densities of GIR. However, the DEIR fails to describe and compare the street networks (grid system in GIR vs. parkways and expressways in CVSP), the transit systems (BRT and neighborhood bus loops in GIR vs. an untested bus system on a fixed guide-way) or the flood control systems (Fisher Creek floodplain in GIR vs. a man-made lake and urban canal) of the two plans.

The DEIR is dismissive when describing on page 450 that in GIR "office and industrial uses are located in areas perpendicular to Monterey Road rather than spread throughout the Development Area." First of all it is a stretch to say the CVSP spreads office uses throughout the Development Area (DA), and secondly locating jobs adjacent to rail lines promotes and supports transit use as opposed to jobs located along Bailey Avenue which promotes use of BOH. However, the DEIR makes no attempt to describe this difference in the two plans.

The DEIR is also confusing and misleading by stating on page 451 that "the protection of some lands may result in more intense development in other portions of the DA...[and] the less likely it will be that trees will be protected within the developed areas." This statement needs explanation as GIR promotes higher densities and therefore taller buildings on less land.

Conclusion

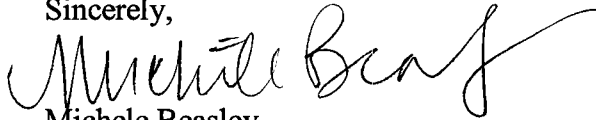
Greenbelt Alliance maintains that development of Coyote Valley is premature given the unfinished planning process, development potential in other parts of San Jose, and need

GA comment letter on CVSP DEIR
June 29, 2007

for a General Plan update. The DEIR is inadequate to inform the public and thereby unlawful by CEQA standards.

Greenbelt Alliance appreciates being kept informed of all future meetings and reports related to the DEIR and CVSP and for the opportunity to comment on the DEIR.

Sincerely,

A handwritten signature in black ink, appearing to read "Michele Beasley". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michele Beasley
South Bay Field Representative
408.983.0856



January 9, 2006

Coyote Valley Task Force

Dear Members of the Coyote Valley Task Force;

The Committee for Green Foothills makes the following recommendations for the agricultural land mitigation strategy options:

1. The agricultural assessment discussed in the city's agricultural land conservation and mitigation memo should be done now, in the Specific Plan EIR process, and not at some later point as the memo appears to imply. The decision to convert the land from agricultural uses to other uses will be taken at the time that the Specific Plan is approved (if that happens), even though the actual conversion waits until later. There is therefore no reason to wait in doing the agricultural assessment. Any waiting would constitute illegal segmentation of the environmental analysis. Furthermore, the assessment of the land's agricultural value looks in part upon the use of adjoining parcels. If this agricultural assessment and development is done in piecemeal fashion, then at some midway point, the piecemeal loss of Coyote Valley farmland will be used as an excuse to claim that the remaining agricultural lands in Coyote Valley have no agricultural significance.
2. The city should not alter the LESA agricultural assessment by allowing exceptions where land rated at a score of greater-than 39 points could be converted away from agriculture without being deemed a significant loss. The city's justification for this on page 4 of its memo states that the General Plan goal is to avoid "premature" conversion of agricultural lands, with the implication that when it is "mature" then conversion is not significant. This is an improper environmental analysis. The loss of agricultural land is either significant or it is not, and whatever goals are considered for the use of that land subsequently do not matter. Those goals are only relevant for deciding whether other overriding considerations outweighs the significant environmental impact. In other words, whatever goals that the city has with a project does not change whether the impacts of reaching those goals are significant.
3. The four strategy options may give an unintentionally misleading impression that the city is equally free to choose between the different options. Environmental analysis does not work like that. Either an impact is significant or it is not, no matter what the city may wish. Furthermore, CEQA requires that the city adopt any feasible mitigations for impacts that are determined to be significant.
 - If preservation of agricultural land is a feasible mitigation for the significant loss of agricultural land, the city has no choice - it must go ahead and impose preservation requirements. We believe that the "no change" Strategy Option I fails to meet legal requirements as established in recent case law cited in our letter to the city, dated July 1, 2005 (part of the Task Force packet). Therefore, this option is not available to the city as a legal choice.
 - We can see no credible analysis concluding that a preservation of less agricultural land than the land that is lost to be something that reduces the impact to a less-than-significant level. Therefore, Strategy Option II is also not a legal option.
 - If the city believes that Strategy Option III is available to it, the city must explain why preserving land at a ratio of 1:1 or greater is not feasible. Absent a fully-adequate explanation, Strategy Option III is not a legal option. Given the availability of farmland in and near to Coyote Valley, we do not believe the city can justify this option.

4. The city must acknowledge that instead of adopting overriding considerations, it can also choose to reject the project. Such acknowledgment is missing from the city memo.

Please contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Schmidt", with a stylized flourish at the end.

Brian A. Schmidt
Legislative Advocate, Santa Clara County

1 RICHARD K. WILLARD
Acting Assistant Attorney General

2 JOSEPH P. RUSSONIELLO
United States Attorney

3
4 Assistant United States Attorney

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9 Telephone: (202) 633-4469

10
11 SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

12 TONY P. SANTOS, individually,)
13 and as representative of the)
class hereinafer set forth,)

14 and)

15 UNITED STATES OF AMERICA,)

16 Plaintiffs,)

17 v.)

No. 524355

18 THE CITY OF SAN JOSE, a)
19 municipal corporation,)
20 SANTA CLARA VALLEY WATER)
DISTRICT, and DOES ONE)
through SIXTY, inclusive,)

21 Defendants.)
22

23 COMPLAINT FOR DAMAGES

24 The UNITED STATES OF AMERICA, by its undersigned attorneys,
25 alleges for its complaint as follows:
26

(ENDORSED)

FILED

SEP 5 1985

GRACE K. YAMAKAWA
County Clerk
Santa Clara County

BY _____ DEPUTY

Attachment B

PARTIES

1 1. The plaintiff-intervenor is the United States of
2 America, suing on behalf of the Federal Emergency Management
3 Agency ("FEMA") and the Federal Insurance Administration ("FIA").

4 2. The defendant City of San Jose is a municipal
5 corporation in the County of Santa Clara, State of California,
6 and is a Special Charter City.

7 3. The defendant Santa Clara Valley Water District
8 (formerly Santa Clara Flood Control and Water Conservation
9 District) is a body corporate and politic, created by Act No.
10 7335 of the General Laws of the State of California, and will
11 hereafter be referred to as the "Flood Control District."

12 4. Both named defendants are the owners of, or are in
13 control of, and/or have jurisdiction over, a system of levees
14 around the perimeter of the area known as Alviso, and of the
15 Coyote River flowing toward and to Alviso, and of the Anderson
16 Dam, which is the immediate source of said Coyote River prior to
17 its entry into the Alviso area.

FACTS

18
19 5. In 1968, Congress enacted the National Flood Insurance
20 Act of 1968 (the Act), Pub. L. 90-448, 42 U.S.C. §§ 4001, et
21 seq. Under this Act, residents of communities which participate

1 in the National Flood Insurance Program ("NFIP") are able to
2 purchase flood insurance issued by the federal government.

3 6. Under 42 U.S.C. §§ 4011 and 4012, the Secretary of the
4 United States Department of Housing and Urban Development
5 ("HUD") was authorized to administer the program. In 1969, this
6 responsibility was delegated to the Administrator of the FIA, a
7 component of HUD. In 1979, the administration of the program
8 was transferred from HUD to FEMA, another agency of the United
9 States, pursuant to Executive Order No. 12127, effective April
10 1, 1979. The FIA thus became a component of FEMA.

11 7. An important Congressional purpose behind enactment of
12 the NFIP was to "require states or local communities, as a
13 condition of future Federal financial assistance, to participate
14 in the flood insurance program and to adopt adequate flood plain
15 ordinances with effective enforcement provisions consistent with
16 Federal standards to reduce or avoid future flood losses." 42
17 U.S.C. § 4002(b)(3).

18 8. Various residents of the Alviso area entered into the
19 NFIP pursuant to 42 U.S.C. § 4056, which allows residents of an
20 area to purchase flood insurance from FEMA prior to the area
21 becoming part of the NFIP. Section 4056 provides emergency
22 coverage to residents purchasing federal flood insurance to
23 provide a "first layer amount of insurance on all insurable
24 structures before the effective date of" the community's
25 entrance into the NFIP. 44 C.F.R. § 59.1

26 9. Commencing in February 1983, and continuing through
early April, 1983, the area of San Jose, California known as

1 Alviso experienced flooding causing damage to homes and
2 businesses owned by persons covered by the NFIP. Due to the
3 damage from that flooding, plaintiff-intervenor [or the United
4 States] has paid out approximately \$1.5 million in flood
5 insurance claims.

6 10. The flood damage arising from the February-April, 1983
7 flooding and the resultant flood insurance claims are the direct
8 and proximate result of the willful and negligent acts and
9 omissions of defendants.

10 11. The flooding that occurred in Alviso resulted from rain-
11 storms in Santa Clara County that caused the Anderson Dam to
12 fill up beyond its holding capacity. The dam was constructive
13 in 1950 and is owned and operated by the Flood Control
14 District. As a result of the Flood Control District's
15 maintenance and operation of the Anderson Dam, the United States
16 has paid claims in an amount of approximately \$1.5 million.

17 12. Recognizing the potential for flooding, the Flood
18 Control District had previously adopted a plan of operation for
19 the dam in order to decrease the chances of flooding as early as
20 1982. This plan recognized the probability of flooding during
21 periods of heavy rainfall. This plan, however, was not put into
22 effect prior to the flooding in February-April, 1983, even
23 though the Flood Control District knew that severe winter storms
24 were predicted.

25 13. Prior to the storms, the dam already was holding
26 significantly more water than the Flood Control District's plan

1 had determined to be appropriate capacity. Water began spilling
2 over the dam in early February, 1983, and continued into early
3 March of 1983. The water from the dam fell into Coyote Creek.
4 Coyote Creek was unable to handle this increased flow. The
5 result of this increase in capacity was substantial "over-
6 banking" in the Alviso area, causing the flood damage at issue
7 in this litigation.

8 14. The Flood Control District has failed to maintain
9 Coyote Creek in a manner that would be likely to prevent
10 flooding in the Alviso area. For example, the Flood Control
11 District has failed to maintain an adequate system of levees
12 along Coyote Creek, even though it was aware of the high
13 probability of flooding if these levees were not maintained. As
14 a direct result of the Flood Control District's failure to
15 maintain an adequate system of levees, the United States has
16 paid claims arising out of the flooding in an amount [reaching
17 almost] \$1.5 million.

18 15. Alviso is bordered by a system of levees on the north
19 intended to prevent flooding. Cut into these levees are
20 floodgates intended to steer water into San Francisco Bay and
21 out of Alviso. On information and belief, both the City of San
22 Jose and the Flood Control District have the responsibility of
23 maintaining these floodgates. These floodgates, however, were
24 inadequately maintained and, by the time of the flooding in the
25 winter of 1983, inoperable. As a direct result of this improper
26

*24 years fall
m. h. under
over 100 years*

1 maintenance, the United States has paid claims arising out of
2 the flooding in an amount reaching almost \$1.5 million.

3 COUNT I

4 16. Plaintiff-Intervenor realleges the allegations of
5 paragraphs 1-15 and incorporates the same by reference.

6 17. Defendants, the City of San Jose and the Flood Control
7 District, through the aforementioned willful and negligent acts
8 and omissions concerning design, maintenance and operation of
9 the flood control system in and around Alviso, have caused one
10 or more dangerous conditions of public property to exist within
11 the terms and meaning of Government Code Section 835(a) and had
12 notice of this dangerous condition in sufficient time to have
13 taken measures to correct it within the terms of Government Code
14 Section 835(b).

15 18. As a direct and proximate result of the foregoing,
16 property covered under the NFIP was damaged, thus requiring the
17 United States to pay flood insurance claims totalling
18 \$1,481,384.68.

19 COUNT II

20 20. Plaintiff-Intervenor realleges the allegations of
21 paragraphs 1-20 and incorporates the same by reference.

22 21. Defendants, the City of San Jose and the Flood Control
23 District have taken deliberate actions for a public purpose
24 which proximately caused the flooding of the Alviso area.

25 22. The aforesaid activity constitutes inverse condemnation
26 within the terms and meaning of Section 19 of Article I of the
Constitution of the State of California.

1 23. As a direct result of the inverse condemnation, insured
2 covered under the NFIP were damaged, thus requiring the United
3 States to pay flood insurance claims totalling \$1,481,384.68.

4
5 25. WHEREFORE, plaintiff-intervenor demands judgment
6 against defendants generally and individually as follows:

7 a. For damages in the amount of \$1,481,384.68 for money
8 paid out in NFIP claims to property owners in the Alviso area.

9 b. For injunctive relief restraining and enjoining
10 defendants generally and individually from continuing to
11 maintain an inadequate flood control system.


12 c. For such other relief as the Court deems necessary and
13 appropriate.

14 DATED: 9-4-85

15 Respectfully submitted,

16 RICHARD K. WILLARD
17 Acting Assistant Attorney General

18 JOSEPH P. RUSSONIELLO
19 United States Attorney

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22 Assistant United States Attorney

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Attorneys for Plaintiff-Intervenor.

(ENDORSED)

FILED

CERTIFICATE OF SERVICE

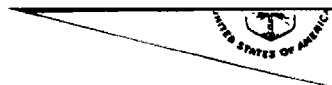
1 I hereby certify that on this ____ day of September, 1985, a
2 copy of the foregoing United States' Motion to Intervene,
3 Proposed Order, Memorandum in Support of Motion to Intervene, ^{GRACE K. YAMAKAWA}
4 and complaint was mailed, first class mail, postage prepaid to ^{Santa Clara County}
5 the following counsel of record: ^{BY} ~~DEPUTY~~

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18 ASSISTANT UNITED STATES ATTORNEY
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NATIONAL MARINE FISHERIES SERVICE

Southwest Region
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404

In reply please refer to:

OCT 15 2001 151422-SWR-01-SR-904:GRS

Attachment C

Gordon Liu
Regulatory Branch
U.S. Department of the Army
San Francisco District, Corps of Engineers
333 Market Street
San Francisco, California 94105-2197

Dear Mr. Liu:

Thank you for the opportunity to comment on the pre-construction notification (PCN) for Polak Quarry Reclamation (File No. 26263S). The Corps of Engineers (Corps) proposes to permit this project under authority of Section 404 of the Clean Water Act with Nationwide Permit #27 (Wetland and Riparian Restoration and Creation Activities).

The permit applicant, Granite Rock, proposes to implement a reclamation plan for unnamed quarry pits east of Coyote Creek in Santa Clara County, California (Polak Quarry site) on land owned by the Santa Clara County Parks and Recreation Department. The site is approximately 110 acres and is located along Coyote Creek, just west of Highway 101, less than 1 mile south of the Coyote Creek Golf Course, and about two miles north of Cochrane Road. The main elements of the plan include filling a small pond (designated Pond A), re-grading of steep slopes around portions of Pond B, C, and D to create slopes no more than 2.5:1, flattening out the old steep piles on the north part of the site, constructing foot paths with overlooks and interpretive signs, excavating three shallow depressions in the northern portion of the site to enhance their function as wetlands, removal of old scale structure, scarifying and placing topsoil over the center area, and revegetating areas disturbed by construction.

Available information indicates that the threatened Central California Coast steelhead (*Oncorhynchus mykiss*) occurs in Coyote Creek immediately adjacent to the project area. The project site is also located within designated critical habitat for this species (65 FR 7764). Additionally, this reach of Coyote Creek including the Polak Quarry site has been the subject of several discussions and a site visit on August 29, 2001 by the Santa Clara Valley Water District (SCVWD) Fisheries Aquatic Habitat Collaborative Effort (FAHCE). FAHCE is a collaborative effort initiated in 1997 by the California Department of Fish and Game and SCVWD to develop



a work plan which will address SCVWD facilities and operations on Stevens Creek, Guadalupe River, and Coyote Creek. For Coyote Creek, FAHCE is preparing a solution option designed to address (1) fish passage, (2) instream flows, (3) water quality - temperature, (4) riparian vegetation, and (5) instream cover.

Past mining activities including the Polak Quarry site have severely degraded habitat conditions for threatened steelhead in this reach of Coyote Creek. A stream habitat inventory of Coyote Creek conducted by Entrix for FAHCE in summer of 1999 found a number of habitat constraints associated with lack of riparian cover, large low-velocity pools, and poor substrate in this area. However, immediately upstream of this reach, habitat conditions for steelhead improve significantly. In fact, the reach immediately above the Polak Quarry site, extending 3-4 miles downstream of Anderson Dam offers the highest quality spawning and rearing habitat for steelhead on Coyote Creek.

Efforts by FAHCE to improve water temperatures and stream flows conditions below Anderson Dam are expected to provide benefits to steelhead in Coyote Creek. However, downstream of Cochran Road, the Coyote Creek channel and floodplain have been highly altered by mining. Through this reach, water releases from Anderson Reservoir by SCVWD will provide marginal benefits to steelhead unless the channel geomorphology of Coyote Creek is restored. The Polak Quarry site is within the reach requiring major channel reconfiguration to restore properly functioning stream and riparian habitat conditions. The PCN does not provide adequate information to determine if the Polak Quarry reclamation plan is consistent with restoring geomorphologic functions in Coyote Creek. This reclamation plan should also be developed in coordination with a larger stream habitat enhancement plan to restore the entire mined reach of Coyote Creek.

Based upon the project's potential to adversely affect listed Central California Coast steelhead and designated critical habitat, the Corps' permitting of the Polak Quarry reclamation plan should be subject to an Endangered Species Act section 7 consultation with the NMFS. Pursuant to Section 7(a)(2) of the ESA, all federal agencies are required "to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence" of any endangered or threatened species or result in the destruction of critical habitats. If an agency determines that its proposed action "may affect" an endangered or threatened species, the agency must formally consult with the relevant Service, the U.S. Fish and Wildlife Service and/or NMFS, depending on the species that are affected by the proposed action.

For the above proposed action, I recommend the Corps initiate formal consultation pursuant to section 7 of the ESA through a written request to the NMFS. The consultation initiation package must include all the following:

- a description of the action being considered;
- a description of the specific area that may be affected by the action;
- a description of any listed species or critical habitat that may be affected by the action;

- a description of the manner in which the action may affect any listed species or critical habitat, and an analysis of cumulative effects;
- relevant reports, including any environmental impact statements, environmental assessments, biological assessments or other analysis prepared on the proposal; and
- any other relevant studies or information available on the action, the affected listed species, or critical habitat.

Formal consultation can be initiated by written request to Rodney R. McInnis, Acting Regional Administrator at NMFS, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, California, 90802-4213. Please provide a copy of your letter requesting consultation and all supporting documents to the NMFS Santa Rosa office at 777 Sonoma Avenue, Room 325, Santa Rosa, California 95404. Formal consultation will conclude within 90 days of the date consultation is initiated and NMFS is provided an additional 45 days to complete a biological opinion.

If you have questions concerning these comments, please contact Mr. Gary Stern of my staff at (707) 575-6060.

Sincerely,



Patrick Rutten
Northern California Supervisor
Protected Resources Division

cc: Jim Lecky, NMFS, Long Beach
Mark Littlefield, FWS
Carl Wilcox, DFG
Scott Akin, SCVWD
Richard McMurtry, RWQCB